

This is a divorce case. Belinda Hodge ("Wife") filed a complaint for divorce to which her husband, Norman Vincent Hodge ("Husband"), responded with a motion to dismiss "for failure to state a cause of action upon which relief can be granted and otherwise failing to invoke the jurisdiction of the Court." In the course of a hearing on Husband's motion, it became apparent that the basis of the motion was the fact that Wife had not set forth her maiden name in the complaint, as required by T.C.A. § 36-4-106(b)(1).¹ Wife made an oral motion to amend her complaint in order to set forth her maiden name. The trial court denied Wife's motion and dismissed the complaint.

Wife filed a motion for a new trial, or, in the alternative, to reconsider. The trial court denied this motion, opining "that the language of T.C.A. § 36-4-106(b)(1) control[s] over Rule 15 of the Tenn.R.Civ.P., such that the Court was without jurisdiction to permit an amendment...."²

Rule 15.01, Tenn.R.Civ.P., provides, in pertinent part, that "leave [to amend a pleading] shall be freely given when justice so requires." Rule 15.01 "needs no construction; it

¹T.C.A. § 36-4-106(b)(1) (Supp. 1999) provides, in pertinent part, as follows:

The complainant shall also allege the full name of the husband, [and] the full maiden name of the wife....It shall be mandatory that every complaint filed under this chapter shall contain the foregoing, and the trial judges shall dismiss petitions and bills which do not contain the foregoing unless it can be shown to the satisfaction of the court that such information could not be obtained by the complainant or petitioner by exercising due diligence.

²Without explanation, the trial court also noted in its order as follows:

By way of dictum, this Court shall henceforth deny any motions to dismiss complaints for divorce which fail to include information required by Tenn. Code Ann. § 36-4-106(b)(1), but rather, pursuant to Rule 15, Tennessee Rules of Civil Procedure, shall freely permit amendments to such divorce complaints to add any omitted information.

means precisely what it says, that 'leave shall be freely given.'" **Branch v. Warren**, 527 S.W.2d 89, 92 (Tenn. 1975).

We find and hold that the trial court erred in denying Wife's motion to amend her complaint to set forth her maiden name. Although T.C.A. § 36-4-106(b)(1) mandates that certain information be set forth in a divorce complaint, we find nothing in the language of the statute that would prohibit a trial court from permitting a party to amend his or her complaint in order to comply with the requirements of the statute.

The judgment of the trial court dismissing Wife's complaint is reversed. This case is remanded to the trial court for further proceedings. Costs on appeal are taxed to the appellee.

Charles D. Susano, Jr., J.

CONCUR:

Houston M. Goddard, P.J.

D. Michael Swiney, J.